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10 SEAN MIRAN

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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **EASTERN DIVISION**

15 Sean Miran, *on behalf of himself and all*  
16 *others similarly situated,*

17 Plaintiff,

18 vs.

19 Hard Eight Nutrition LLC d/b/a  
20 BulkSupplements.com,

21 Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

- (1) Fraudulent Concealment;  
(2) Unjust Enrichment;  
(3) Breach of Express Warranty;  
(4) Violation of Cal. Bus. & Prof. Code  
§§ 17500, et seq.;  
(5) Violation of the California  
Consumers Legal Remedies Act,  
Cal. Civ. Code §§ 1750, et seq.;  
(6) Violation of California's Unfair  
Competition Law, Cal. Bus. & Prof.  
Code §§ 17200, et seq.; and  
(7) Breach of Implied Warranty of  
Merchantability.

**DEMAND FOR JURY TRIAL**

1 For this Class Action Complaint, Plaintiff Sean Miran, by undersigned counsel,  
2 states as follows:

3 **INTRODUCTION**

4 1. Defendant Hard Eight Nutrition LLC d/b/a BulkSupplements.com  
5 (“Defendant” or “Bulk”) formulates, manufactures, advertises and sells “Magnesium  
6 Glycinate Powder” dietary supplement powder (the “Magnesium Supplements” or the  
7 “Supplements”) throughout the United States that purport to contain 400 mg of  
8 Magnesium “as Magnesium Glycinate” per one serving comprised of 2,200  
9 milligrams of powder. It prominently displays the magnesium content of the  
10 Supplements as well as the number of servings contained in the product on the  
11 product’s labels.

12 2. However, it is impossible to obtain 400 mg of magnesium derived from  
13 magnesium glycinate in one 2,200 milligram serving of powder. Magnesium  
14 glycinate simply possesses far too low a concentration of magnesium to do so.

15 3. Accordingly, the Magnesium Supplements do not contain 400 mg of  
16 magnesium as magnesium glycinate per serving and thus do not contain the quantity  
17 of magnesium that is advertised, and thus warranted, on each of the product’s labels.  
18 Instead, the Supplements contain significantly less magnesium as magnesium  
19 glycinate than what is claimed and displayed or zero magnesium derived from  
20 magnesium glycinate.

21 4. In misstating the actual magnesium content of the Supplements, Bulk  
22 violates federal and state law and regulations designed to prevent deceptive  
23 supplement labeling and breaches the express warranty created by its labeling.  
24 Defendant’s prominent misrepresentations regarding its Magnesium Supplements  
25 form a pattern of unlawful and unfair business practices that visits harm on the  
26 consuming public.  
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## PARTIES

5. Plaintiff Sean Miran (“Plaintiff”) is and at all times relevant hereto was an adult individual residing in Victorville, San Bernadino County, California. Plaintiff has purchased Bulk’s Magnesium Supplements within the last four years including on January 7, 2024, from Bulk’s online ebay.com store. Plaintiff viewed the front and back label of Defendant’s Magnesium Supplements when he purchased the product.

6. Defendant Hard Eight Nutrition LLC d/b/a BulkSupplements.com (“Bulk” or “Defendant”) is a Nevada limited liability company with a principal place of business at 7511 Eastgate Road, Henderson, Nevada 89011-4058. Bulk markets, advertises, distributes and sells a magnesium nutritional supplement product throughout the United States, including California.

## JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005: (1) during the Class Period Bulk sold its Magnesium Supplements to more than 100 people, (2) in the same period those sales, combined with Plaintiff’s requested injunctive relief, punitive damages and attorneys’ fees, exceeds \$5,000,000, and (iii) there is minimal diversity because Plaintiff and Class Members and Defendant are citizens of different states.

8. Venue is proper in this district and this Court has specific jurisdiction over Bulk because Plaintiff resides in this District and purchased Bulk’s product at issue in this case from within this District.

## FACTUAL ALLEGATIONS

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*a. Defendant misrepresents that one serving of the Magnesium Supplement contains 400 mg of magnesium derived from magnesium glycinate*

9. The amount and type of magnesium, as well as the number of servings, contained within Defendant’s Magnesium Supplements are material to any consumer

1 seeking to purchase a magnesium supplement.

2 10. Defendant purports to sell its Magnesium Supplements in the form of  
3 magnesium glycinate powder, which is known as a highly absorbable form of  
4 magnesium.

5 11. Bulk's website advertises that "Magnesium Glycinate is a highly  
6 bioavailable form of magnesium, allowing for better absorption and utilization by the  
7 body compared to other forms."<sup>1</sup> It further claims that Magnesium Glycinate provides  
8 "Muscle Relaxation," "Stress Relief," "Bone Health," and "Mood Support."<sup>2</sup>  
9

10 12. Bulk labels and advertises its Magnesium Supplements in a manner that  
11 highlights the amount of magnesium as magnesium glycinate contained within each  
12 serving, as well as the number of servings provided. As set forth in the below images,  
13 Bulk prominently displays that the Supplements contain Magnesium Glycinate and that  
14 one serving of 2,200 mg of powder contains 400 mg of "Magnesium (as Magnesium  
15 Glycinate)." It also highlights the number of 2,200 mg servings contained within the  
16 product (*e.g.*, 113 servings in its 250 gram product). Such representations constitute an  
17 express warranty regarding the Magnesium Supplements' magnesium content.  
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27 <sup>1</sup> <https://www.bulksupplements.com/products/magnesium-glycinate-powder> (last  
28 visited April 2, 2024).

<sup>2</sup> *Id.*

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## Magnesium Glycinate

250g (8.8oz)

SUPPLEMENT FACTS		
Serving Size: 2200 milligrams (about 4/5 tsp)		
Servings per container: 113		
Amount Per Serving	% Daily Value	
Magnesium (as Magnesium Glycinate)	400mg	95%
Other Ingredients: None		

**Free of:** Sugar, soy, dairy, yeast, gluten, additives

**Suggested Use:** As a dietary supplement, take 2200mg (about 4/5 tsp) once or twice daily with water, or as directed by a physician.

Use an accurate milligram scale. Contents are sold by weight, not volume. Settling may occur.

Store in a dry, cool, dark place.

**Distributed Exclusively by:**  
BulkSupplements.com  
7511 Eastgate Rd  
Henderson, NV 89011 US

**WARNING:**  
This product is not intended to diagnose, treat, cure, or prevent any disease. Always consult a physician before taking any dietary supplement. Keep out of reach of children.  
Lot Number: XXXXXXXX  
Best Before: XXXXXXXX  
000

**Barcode:** XXXXXXXX  
NEW - BulkSupplements.com Magnesium Glycinate Powder (250 Grams)

13. Bulk sells its Magnesium Supplement in 100 gram, 250 gram, 500 gram, 1 kilogram, 5 kilogram and 25 kilogram packages. The labels for each Supplement product uniformly claim that one serving of 2,200 milligrams of the Supplement provides 400 mg of Magnesium (as Magnesium Glycinate) and note the number of 2,200 milligram servings provided.<sup>3</sup>

14. Upon information and belief, Bulk labeled its Magnesium Supplement in

<sup>3</sup> <https://www.bulksupplements.com/products/magnesium-glycinate-powder?variant=32133429100655> (last visited April 3, 2024).

1 a materially identical manner throughout the Class Period, stating that one 2,200 mg  
2 serving of the Supplement contains 400 mg of magnesium as magnesium glycinate.

3 15. The U.S. Department of Health & Human Services directs that “[t]he  
4 Supplement Facts panel on a dietary supplement label declares the amount  
5 of elemental magnesium in the product, not the weight of the entire magnesium-  
6 containing compound.” See [https://ods.od.nih.gov/factsheets/Magnesium-](https://ods.od.nih.gov/factsheets/Magnesium-HealthProfessional/)  
7 [HealthProfessional/](https://ods.od.nih.gov/factsheets/Magnesium-HealthProfessional/)) (last visited April 3, 2024). Here, the Supplement Facts note that  
8 one serving of 2,200 mg of the Supplement contains “400 mg” of “Magnesium (as  
9 Magnesium Glycinate).”

10 16. The Supplement Facts also note that the listed 400 mg of magnesium  
11 derived from magnesium glycinate constitutes 95% of the recommended Daily Value  
12 of magnesium. Under 21 C.F.R. § 101.9(c)(8), addressing “[t]he requirements related  
13 to including a statement of the amount per serving of vitamins and minerals,” “[t]he  
14 quantitative amounts of vitamins and minerals, excluding sodium, shall be the amount  
15 of the vitamin or mineral included in one serving of the product, using the units of  
16 measurement and the levels of significance given in paragraph (c)(8)(iv) of this  
17 section.” 21 C.F.R. § 101.9(c)(8)(iii). With respect to magnesium, the recommended  
18 Daily Value for adults and children over four years is 400 milligrams (mg) of  
19 magnesium. 21 C.F.R. § 101.9(c)(8) (iv). 95% of 400 milligrams is 399 milligrams.  
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21 ***b. It is impossible for 2,200 mg of the Magnesium Supplement to contain 400 mg***  
22 ***of magnesium as magnesium glycinate***

23 17. Defendant’s representations are false and misleading.

24 18. It is impossible for one 2,200 mg serving of Defendant’s Magnesium  
25 Supplement to contain the advertised and warranted 400 mg of magnesium as  
26 magnesium glycinate in light of the amount of magnesium contained in magnesium  
27 glycinate.  
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1           19. Magnesium glycinate contains only 14.1% magnesium by mass.<sup>4</sup>  
 2 Accordingly, approximately 2,830 mg of magnesium glycinate is needed to obtain 400  
 3 mg of magnesium.

4           20. In light of the foregoing, Defendant's representations that one serving of  
 5 2,200 mg of the Magnesium Supplements contains 400 mg of magnesium as  
 6 magnesium glycinate is impossible and false.

7           21. Instead, the Supplements either (1) contain less magnesium as magnesium  
 8 glycinate than advertised and/or (2) contain magnesium from undisclosed sources other  
 9 than the warranted and advertised magnesium glycinate.

10           22. For instance, if the magnesium provided by the Supplements only comes  
 11 from magnesium glycinate, then one 2,200 mg serving only provides 310 mg of  
 12 magnesium (as magnesium glycinate), 22.5% less than the advertised and warranted  
 13 400 mg. Additionally, in this scenario the number of servings providing 400 mg of  
 14 magnesium as magnesium glycinate is less than advertised. Thus, for Bulk's 250 gram  
 15 product, there are 88 servings of 400 mg of magnesium as magnesium glycinate, not  
 16 the 113 servings that Bulk advertises and warrants.<sup>5</sup>

17           23. In the alternative, the magnesium in the Supplement may be derived from  
 18 other sources of magnesium, such as magnesium oxide, which contains a higher  
 19 percentage of elemental magnesium than magnesium glycinate but which is less  
 20 desirable to consumers because, *inter alia*, it is not absorbed by the body as well as  
 21 magnesium glycinate and therefore is less desirable to those consumers who seek to  
 22 raise their magnesium levels.

23           24. The above misrepresentations regarding the contents and ingredients of  
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26 <sup>4</sup> See, e.g., [https://en.wikipedia.org/wiki/Magnesium\\_glycinate](https://en.wikipedia.org/wiki/Magnesium_glycinate) (last visited April 3, 2024).

27 <sup>5</sup> 250 grams = 250,000 milligrams

28 2,836 milligrams of magnesium glycinate = 400 mg of magnesium

250,000 / 2,830 = 88

1 Defendant's Magnesium Supplements are unlawful under both state and federal law.  
2 The Federal Food, Drug, and Cosmetic Act ("FDCA"), passed by Congress in 1938,  
3 grants the Food and Drug Administration ("FDA") power to ensure "foods are safe,  
4 wholesome, sanitary, and properly labeled." 21 U.S.C. § 393(b)(2)(A). In 1990,  
5 Congress amended the FDCA with the Nutrition Labeling and Education Act  
6 ("NLEA"), which sought to clarify and strengthen the FDA's legal authority to require  
7 nutrition labeling on foods, and to establish the circumstances under which claims may  
8 be made about nutrients in foods. 21 U.S.C. §§ 343, et seq.

9  
10 25. Bulk's false and deceptive statements violate 21 U.S.C. § 343(a)(1), which  
11 deems food (including nutritional supplements) misbranded when the label contains a  
12 statement that is "false or misleading in any particular." Federal regulations also dictate  
13 the manner in which Defendant must label its product and the methods it must use to  
14 determine the magnesium contents of its product. Defendant failed to ensure the  
15 accuracy of its Magnesium Supplements' labels in accordance with these federal  
16 regulations.

17 26. California prohibits the misbranding of food in a way that parallels the  
18 FDCA through the "Sherman Food, Drug, and Cosmetic Law," Cal. Health & Safety  
19 Code § 109875, *et seq.* (the "Sherman Law"). The Sherman Law explicitly incorporates  
20 by reference "[a]ll food labeling regulations and any amendments to those regulations  
21 adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after  
22 that date" as the food labeling regulations of Cal. Health & Safety Code § 110100(a).  
23 Accordingly, the Sherman Law also provides that food or nutritional supplements are  
24 misbranded if its labeling is "false or misleading in any particular." *Id.*

25 27. Bulk's representations regarding the magnesium contents of its  
26 Magnesium Supplement – including its representation that there are 400 mg of  
27 magnesium derived from magnesium glycinate in one 2,000 mg serving – are material.  
28 Reasonable consumers of magnesium supplements base their purchasing decisions on

1 the advertised and warranted amount of magnesium contained therein and the source  
2 from which such magnesium is derived. Consumers specifically prize magnesium  
3 derived from magnesium glycinate over other sources of magnesium because of its  
4 “high absorption,” as Defendant claims. Additionally, consumers reasonably rely of  
5 Defendant’s label to accurately determine the identity, amount and source of any dietary  
6 ingredients included within the Defendant’s Magnesium Supplements. Accordingly,  
7 Plaintiff and Class Members, as reasonable consumers, were materially misled by  
8 Defendant’s representations regarding the true nature and composition of the  
9 Magnesium Supplements’ magnesium contents.

10  
11 28. Further, such misrepresentations also breach Defendant’s express warranty  
12 that each serving of the Magnesium Supplement contains magnesium “as magnesium  
13 glycinate” in the amount listed on its label (400mg).

14 29. The difference between the Magnesium Supplements promised and the  
15 products sold is significant and material because the sold products do not contain 400  
16 mg of magnesium derived from magnesium glycinate per serving. The amount and  
17 source of actual magnesium provided, and the measure of magnesium per serving, has  
18 real impacts on the benefits provided to consumers by the Magnesium Supplements and  
19 the actual value of the Supplements. Persons requiring a certain amount of magnesium  
20 supplementation – whether for “Muscle Relaxation,” “Stress Relief,” “Bone Health,”  
21 and “Mood Support” as Bulk claims – are left to ingest less magnesium as magnesium  
22 glycinate than Defendant states will be provided and/or are left to ingest magnesium  
23 that is derived from sources of magnesium that are inferior and less desirable than the  
24 magnesium glycinate promised by the Defendant.

25 30. Because Plaintiff and Class Members purchased a product that contains  
26 less magnesium as magnesium glycinate than advertised and warranted, Plaintiff and  
27 Class Members have suffered an injury-in-fact. Misbranded nutritional supplements  
28 cannot legally be manufactured, held, advertised, distributed or sold. Thus, misbranded

1 nutritional supplements have no economic value and are worthless as a matter of law,  
2 and purchasers of misbranded nutritional supplements are entitled to a restitution refund  
3 of the purchase price of the misbranded nutritional supplements. Additionally, had  
4 Plaintiff and Class Members known the true nature and composition of the magnesium  
5 content of the Magnesium Supplements, they would not have purchased such Products,  
6 or would have only paid for the magnesium as magnesium glycinate actually delivered  
7 with the Supplements.

8  
9 31. On March 14, 2024, prior to initiating this action, Plaintiff's counsel sent  
10 a demand letter to Bulk on behalf of Plaintiff. The letter, *inter alia*, (1) alleged that  
11 Bulk mislabels and falsely misrepresents the contents of its Magnesium Supplements  
12 and the Supplements contain less magnesium as magnesium glycinate than advertised  
13 in light of the amount of magnesium in magnesium glycinate; (2) alleged that Bulk  
14 breached its written and implied warranties and violated, *inter alia*, the Sherman  
15 Food, Drug, and Cosmetic Law, the California Consumers Legal Remedies Act, and  
16 the Magnuson-Moss Warranty Act; (3) alleged that Plaintiff and similarly situated  
17 consumers had been harmed and injured because they were misled into purchasing  
18 Bulk's Magnesium Supplements and would have paid significantly less for or not  
19 purchased the supplements had they known about the true magnesium content of the  
20 supplements; and (4) demanded that "Bulk immediately cease the above unlawful  
21 practices, cease mislabeling and misbranding Bulk's Magnesium Supplements,"  
22 demanded that it provide Plaintiff "and all other United States purchasers of the  
23 Magnesium Supplements within the last four years with full restitution of all improper  
24 revenues and ill-gotten profits derived from Bulk's wrongful conduct to the fullest  
25 extent permitted by law," and asserted that "purchasers of misbranded nutritional  
26 supplements like Mr. Miran are entitled to a restitution refund of the purchase price of  
27 the misbranded supplements."  
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**CLASS ACTION ALLEGATIONS**

**A. The Class**

32. Plaintiff brings this action on his own behalf and on behalf of the following Classes of persons pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), 23(b)(3) an/or 23(c)(5):

**Nationwide Class:** All persons in the United States who purchased Defendant's Magnesium Supplements during the four year period preceding the filing of the complaint.

**California Subclass:** All persons residing in California who purchased Defendant's Magnesium Supplements during the four year period preceding the filing of the complaint.

33. Any legal entity, Defendant and its employees or agents are excluded from the Class.

**B. Numerosity**

34. Upon information and belief, the Classes are so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, Plaintiff believes, and on that basis alleges, that Bulk has sold its Magnesium Supplements to thousands of United States and California residents during the Class Period and therefore there are thousands of members of each of the Classes.

**C. Common Questions of Law and Fact**

35. There are questions of law and fact common to the Classes that predominate over any questions affecting only individual Class members. These questions include:

- a. Whether Defendant labels, markets and otherwise advertises its Magnesium Supplements in a deceptive, false, or misleading manner by misstating the product's magnesium content;

- 1           b.     Whether Defendant's sale of the Magnesium Supplements constitutes  
2           unfair methods of competition and unfair or deceptive acts or practices in  
3           violation of, *inter alia*, Cal. Bus. & Prof. Code §§ 1770 *et seq.*, including:  
4           whether Defendant misrepresents the source, sponsorship, approval, or  
5           certification of their Magnesium Supplements; whether Defendant  
6           represents that the Magnesium Supplements are of a particular standard or  
7           quality if it is of another; and whether Defendant advertises its Magnesium  
8           Supplements with intent not to sell them as advertised;  
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10          c.     Whether Defendant's sale of the Magnesium Supplements constitutes  
11          misleading and deceptive advertising under, *inter alia*, Cal. Bus. & Prof.  
12          Code § 17500;  
13  
14          d.     Whether Defendant's sale of the Magnesium Supplements constitutes  
15          “unlawful,” “unfair,” or “fraudulent” business acts or practices under, *inter*  
16          *alia*, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, including: whether  
17          Defendant's sale of the Magnesium Supplements constitutes “unlawful” or  
18          “unfair” business practices by violating the public policies set out in Cal.  
19          Bus. & Prof. Code §§ 1770 *et seq.*, Cal. Bus. & Prof. Code §§ 17500 and  
20          other California and federal statutes and regulations; whether Defendant's  
21          sale of the Magnesium Supplements is immoral, unethical, oppressive,  
22          unscrupulous or substantially injurious to consumers; and whether  
23          Defendant's sale of the Magnesium Supplements constitutes an “unfair”  
24          business practice because consumer injury outweighs any countervailing  
25          benefits to consumers or competition, and because such injury could not  
26          be reasonably avoided by consumers;  
27          e.     Whether Defendant's sale of the Magnesium Supplements constitutes a  
28          breach of warranty;  
f.     Whether Defendant concealed material facts concerning the Magnesium

Supplements;

- g. Whether Defendant engaged in unconscionable commercial practices in failing to disclose material information concerning the Magnesium Supplements;
- h. The nature and extent of damages, restitution, equitable remedies, and other relief to which Plaintiff and the Class are entitled; and
- i. Whether Plaintiff and the Class should be awarded attorneys' fees and the costs of suit.

**D. Typicality**

36. The Plaintiff's claims are typical of the claims of the Class since Plaintiff purchased the Magnesium Supplements within the last four years, as did each member of the Class. Furthermore, Plaintiff and all members of the Class sustained economic injuries arising out of Defendant's wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent Class members.

**E. Protecting the Interests of the Class Members**

37. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor his counsel has any interest which might cause them not to vigorously pursue this action.

**F. Proceeding Via Class Action is Superior and Advisable**

38. A class action is the superior method for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation

1 presents a potential for inconsistent or contradictory judgments. Individualized  
 2 litigation increases the delay and expense to all parties, and to the court system,  
 3 presented by the complex legal and factual issues of the case. By contrast, the class  
 4 action device presents far fewer management difficulties, and provides the benefits of  
 5 single adjudication, an economy of scale, and comprehensive supervision by a single  
 6 court.

7  
 8 39. Defendant has acted, and refused to act, on grounds generally applicable  
 9 to the Class, thereby making appropriate final equitable relief with respect to the Class  
 10 as a whole.

### 11 **FIRST CAUSE OF ACTION**

#### 12 **Fraudulent Concealment**

13 **(Plaintiff on behalf of the Nationwide Class or in the alternative the California**  
 14 **Subclass)**

15 40. Plaintiff incorporates by reference all allegations contained in this  
 16 Complaint as though fully stated herein.

17 41. By failing to disclose and concealing the contents of the Magnesium  
 18 Supplements from Plaintiff and Class Members (i.e., the Magnesium Supplements do  
 19 not include the amount of magnesium derived from magnesium glycinate advertised  
 20 and warranted), Defendant concealed and suppressed material facts concerning the  
 21 Magnesium Supplements.

22 42. Defendant knew or should have known that the Magnesium Supplements  
 23 did not contain the amount of magnesium as magnesium glycinate advertised and  
 24 warranted and were not suitable for their intended use.

25 43. Defendant was under a duty to Plaintiff and Class Members to disclose  
 26 and/or not misrepresent the contents of the Magnesium Supplements because:

- 27 a. Defendant was in a superior position to know the true state of facts about  
 28 the magnesium contents of Defendant's Magnesium Supplements,  
 including the type of magnesium Defendant included in the Supplements;

1           b. Plaintiff and Class Members could not reasonably have been expected to  
2           learn or discover that the Magnesium Supplements do not contain the  
3           amount of magnesium as magnesium glycinate advertised and warranted;  
4           and,

5           c. Defendant knew that Plaintiff and Class Members could not reasonably  
6           have been expected to learn about or discover the true magnesium contents  
7           of Defendant's Magnesium Supplements.

8           44. On information and belief, Defendant still has not made full and adequate  
9           disclosures, and continues to defraud consumers by concealing material information  
10          regarding the contents of the Magnesium Supplements.

11          45. The facts concealed or not disclosed by Defendant to Plaintiff and Class  
12          Members are material in that a reasonable person would have considered them to be  
13          important in deciding whether or not to purchase the Magnesium Supplements.

14          46. Plaintiff and the Classes relied on Defendant to disclose material  
15          information it knew, such as the defective nature and contents of the Magnesium  
16          Supplements, and not to induce them into a transaction they would not have entered had  
17          the Defendant disclosed this information.

18          47. By failing to disclose the true contents of the Magnesium Supplements,  
19          Defendant knowingly and intentionally concealed material facts and breached its duty  
20          not to do so.

21          48. Had Plaintiff and other Class Members known that Magnesium  
22          Supplements did not contain the amount of advertised and warranted magnesium as  
23          magnesium glycinate, they would not have purchased the Magnesium Supplements or  
24          would have paid less for them.

25          49. As a result of Defendant's misconduct, Plaintiff and the other Class  
26          Members have been harmed and have been injured.

27          50. Accordingly, Defendant is liable to Plaintiff and Class Members for  
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1 damages in an amount to be proven at trial.

2 51. Defendant's actions and omissions were done maliciously, oppressively,  
3 deliberately, with intent to defraud, and in reckless disregard of Plaintiff' and the Class's  
4 rights and well-being, to enrich Defendant. Defendant's conduct warrants an assessment  
5 of punitive damages in an amount sufficient to deter such conduct in the future, which  
6 amount is to be determined according to proof.

7 52. Furthermore, as the intended and expected result of its fraud and conscious  
8 wrongdoing, Defendant has profited and benefited from Plaintiff's and Class Members'  
9 purchases of falsely advertised and misbranded Magnesium Supplements. Defendant  
10 has voluntarily accepted and retained these profits and benefits with full knowledge and  
11 awareness that, as a result of Defendant's misconduct alleged herein, Plaintiff and Class  
12 Members were not receiving magnesium supplements of the quality, nature, fitness, or  
13 value that had been represented by Defendant, and that a reasonable consumer would  
14 expect.

15 53. Defendant has been unjustly enriched by its fraudulent, deceptive, and  
16 otherwise unlawful conduct in connection with the sale of the Magnesium Supplements  
17 and by withholding benefits from Plaintiff and Class Members at the expense of these  
18 parties. Equity and good conscience militate against permitting Defendant to retain  
19 these profits and benefits, and Defendant should be required to make restitution of its  
20 ill-gotten gains resulting from the conduct alleged herein.

21  
22 **SECOND CAUSE OF ACTION**

23 **Unjust Enrichment**

24 **(Plaintiff on behalf of the Nationwide Class or in the alternative the California  
25 Subclass)**

26 54. Plaintiff incorporates by reference all allegations contained in this  
27 Complaint as though fully stated herein.

28 55. As a result of Defendant's fraudulent acts, and omissions related to the  
magnesium contents of the Supplement, Defendant obtained monies which rightfully

1 belong to Plaintiff, and the Class Members to the detriment of Plaintiff and Class  
2 Members.

3 56. Defendant appreciated, accepted, and retained the non-gratuitous benefits  
4 conferred by Plaintiff and the proposed Class Members who, without knowledge of the  
5 true contents of the Supplements, paid a higher price for Supplements, which actually  
6 had lower values. Defendant also received monies for Supplements that Plaintiff and  
7 the Class Members would not have otherwise purchased or leased.

8 57. It would be inequitable and unjust for Defendant to retain these wrongfully  
9 obtained profits.

10 58. Defendant's retention of these wrongfully obtained profits would violate  
11 the fundamental principles of justice, equity, and good conscience.

12 59. As a result of Defendant's unjust enrichment, Plaintiff and Class Members  
13 have suffered damages.

14 60. Plaintiff does not seek restitution under his Unjust Enrichment claim.  
15 Rather, Plaintiff and Class Members seek non-restitutionary disgorgement of the  
16 financial profits that Defendant obtained as a result of its unjust conduct.

17 61. Additionally, Plaintiff and Class Members seek injunctive relief enjoining  
18 Defendant from further deceptive distribution and sales practices with respect to the  
19 Supplement, enjoining Defendant from selling the Supplement with misleading  
20 information concerning the Supplement's true magnesium content and source. Money  
21 damages are not an adequate remedy for the above requested non-monetary injunctive  
22 relief.  
23

### 24 **THIRD CAUSE OF ACTION**

#### 25 **Breach of Express Warranty Pursuant to Cal. Com. Code § 2313** 26 **(On Behalf of the California Subclass)**

27 62. Plaintiff hereby incorporates by reference the allegations contained in the  
28 preceding paragraphs of this Complaint.

1           63. Plaintiff and each member of the Class formed a contract with Defendant  
2 at the time Plaintiff and the other members of the Class purchased one or more of  
3 Defendant's Magnesium Supplements. The terms of that contract include the promises  
4 and affirmations of fact made by Defendant on the packaging of the Magnesium  
5 Supplements regarding the products' magnesium content, and specifically that the  
6 product contains 400mg of magnesium as magnesium glycinate per each 2,200 mg  
7 serving.

8           64. The Magnesium Supplements' packaging constitute express warranties,  
9 became part of the basis of the bargain, and are part of a standardized contract  
10 between Plaintiff and the members of the Class on the one hand, and Defendant on the  
11 other.

12           65. All conditions precedent to Defendant's liability under this contract have  
13 been performed by Plaintiff and the Class.

14           66. Defendant breached the terms of this contract, including the express  
15 warranties, with Plaintiff and the Class by not providing the products that could  
16 provide the benefits promised, i.e. that the Supplements contain the warranted amount  
17 of magnesium as magnesium glycinate as alleged above.

18           67. As a result of Defendant's breach of its contract, Plaintiff and the Class  
19 have been damaged in the amount of the different purchase price of any and all of the  
20 Magnesium Supplements they purchased and the price of a product which provides  
21 the benefits and contents as warranted.

22  
23                           **FOURTH CAUSE OF ACTION**

24           **Violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*- Untrue, Misleading and**  
25           **Deceptive Advertising**  
26           **(On Behalf of the California Subclass)**

27           68. Plaintiff incorporates by reference all of the above paragraphs of this  
28 Complaint as though fully stated herein.

          69. At all material times, Defendant engaged in a scheme of offering the

1 Magnesium Supplements for sale to Plaintiff and other members of the Class by way  
2 of, *inter alia*, commercial marketing, and advertising, internet content, product  
3 packaging and labelling, and other promotional materials.

4 70. These materials, advertisements and other inducements misrepresented  
5 and/or omitted the true contents and benefits of the Magnesium Supplements as  
6 alleged herein. Such advertisements and inducements appear on the labels of  
7 Defendant's Magnesium Supplements and Defendant's website.

8 71. Defendant's advertisements and other inducements come within the  
9 definition of advertising as contained in Cal. Bus. Prof. Code §§ 17500, et seq., in that  
10 such promotional materials were intended as inducements to purchase Defendant's  
11 Magnesium Supplements and are statements disseminated by Defendant to Plaintiff  
12 and other members of the Class.

13 72. Defendant knew, or in the exercise of reasonable care should have  
14 known, that the statements regarding its Magnesium Supplements' magnesium  
15 content, and specifically the amount of magnesium as magnesium glycinate, were  
16 false, misleading and/or deceptive.

17 73. Consumers, including Plaintiff and members of the Class, necessarily and  
18 reasonably relied on Defendant's statements regarding the contents of its products.  
19 Consumers, including Plaintiff and members of the Class, were among the intended  
20 targets of such representations.

21 74. The above acts of Defendant, in disseminating said misleading and  
22 deceptive statements throughout the State of California to consumers, including  
23 Plaintiff and members of the Class, were and are likely to deceive reasonable  
24 consumers by obfuscating the true nature and amount of the ingredients in  
25 Defendant's Magnesium Supplements, including the true source and amount of  
26 magnesium, and thus were violations of Cal. Bus. Prof. Code §§ 17500, et seq.

27 75. Plaintiff and Class members were harmed and suffered injury as a result  
28

1 of Defendant's violations of the Cal. Bus. Prof. Code §§ 17500, et seq. Defendant has  
 2 been unjustly enriched at the expense of Plaintiff and the members of the Class.

3 76. Accordingly, Plaintiff and members of the Class seek damages including  
 4 full restitution of all improper revenues and ill-gotten profits derived from Defendant's  
 5 wrongful conduct to the fullest extent permitted by law. Misbranded nutritional  
 6 supplements cannot legally be manufactured, held, advertised, distributed or sold.  
 7 Thus, misbranded nutritional supplements have no economic value and are worthless  
 8 as a matter of law, and purchasers of misbranded nutritional supplements are entitled  
 9 to a restitution refund of the purchase price of the misbranded supplements.  
 10

### 11 **FIFTH CAUSE OF ACTION**

#### 12 **Violation of the California Consumers Legal Remedies Act, Cal. Civ. Code §§** 13 **1750, et seq. - Misrepresentation of a product's standard, quality, sponsorship** 14 **approval, and/or certification** 15 **(On Behalf of the California Subclass)**

16 77. Plaintiff incorporates by reference all allegations contained in this  
 17 Complaint as though fully stated herein.

18 78. Defendant's Magnesium Supplements are a "good" as defined by  
 19 California Civil Code §1761(a).

20 79. Defendant is a "person" as defined by California Civil Code § 1761(c).

21 80. Plaintiff and California Class members are "consumers" within the  
 22 meaning of California Civil Code § 1761(d) because they purchased their Magnesium  
 23 Supplements for personal, family or household use.

24 81. The sale of Defendant's Magnesium Supplements to Plaintiff and  
 25 California Class members is a "transaction" as defined by California Civil Code  
 26 §1761(e).

27 82. By labeling their Magnesium Supplements as containing a specific  
 28 amount of magnesium as magnesium glycinate when in fact these products contained  
 less than the advertised amount of magnesium, Defendant violated California Civil

1 Code §§ 1770(a)(2), (5), (7) and (9), as it misrepresented the standard, quality,  
 2 sponsorship, approval, and/or certification of its Magnesium Supplements.

3 83. As a result of Defendant's conduct, Plaintiff and California Class  
 4 members were harmed and suffered actual damages as a result of Defendant's unfair  
 5 competition and deceptive acts and practices. Had Defendant disclosed the true nature  
 6 and/or not falsely represented its Magnesium Supplements' magnesium content,  
 7 Plaintiff and the California Class would not have been misled into purchasing  
 8 Defendant's Magnesium Supplements, or, alternatively, would have paid significantly  
 9 less for them.

10 84. Additionally, misbranded nutritional supplements cannot legally be  
 11 manufactured, held, advertised, distributed or sold. Thus, misbranded nutritional  
 12 supplements have no economic value and are worthless as a matter of law, and  
 13 purchasers of misbranded nutritional supplements are entitled to a refund of the  
 14 purchase price of the misbrand nutritional supplements.

15 85. On March 14, 2024, Plaintiff provided Defendant with notice of its  
 16 alleged violations of the CLRA pursuant to California Civil Code § 1782(a) via  
 17 certified mail, demanding that Defendant correct such violations. Accordingly,  
 18 Plaintiff seeks all available damages under the CLRA for all violations complained of  
 19 herein, including, but not limited to, statutory damages, punitive damages, attorney's  
 20 fees and cost and any other relief that the Court deems proper.

## 21 **SIXTH CAUSE OF ACTION**

### 22 **Violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§** 23 **17200, et seq.**

#### 24 **(On Behalf of the California Subclass)**

25 86. Plaintiff incorporates by reference all allegations contained in this  
 26 Complaint as though fully stated herein.

27 87. The Sherman Law, Cal. Health & Safety Code §§ 109875 et seq., broadly  
 28 prohibits the misbranding of any food or drug products.

1           88. Defendant is a person within the meaning of Cal. Health & Safety Code  
2 § 109995.

3           89. Additionally, California has adopted as its own, and as the Sherman Law  
4 expressly incorporates, “[a]ll food labeling regulations and any amendments to those  
5 regulations adopted pursuant to the federal act, in effect on January 1, 1993, or  
6 adopted on or after that date” as “the food labeling regulations of this state.” Cal.  
7 Health & Safety Code § 110100(a). Federal statutes and regulations, including, but  
8 not limited to, 21 U.S.C. §§ 321, 343, prohibit the mislabeling and misbranding of  
9 food products, including nutritional supplements. See 21 U.S.C. § 321(ff) (“a dietary  
10 supplement shall be deemed to be a food within the meaning of this chapter.”).

11           90. Federal statutes and regulations prohibit misleading consumers by  
12 misrepresenting a product’s nutritional ingredients and including an ingredient or an  
13 amount of an ingredient on the Magnesium Supplements’ nutritional labels that is not  
14 actually included in the products themselves.

15           91. The California Civil Code § 1770(a)(2), (5), (7) and (9) also prohibits  
16 mislabeling food misrepresenting the standard, quality, sponsorship, approval, and/or  
17 certification of food products, as noted above.

18           92. The business practices alleged above are unlawful under Business and  
19 Professional Code §§ 17500, et seq., California Civil Code §§ 1770(a)(2), (5), (7) and  
20 (9) and the Sherman Law, each of which forbids the untrue, fraudulent, deceptive,  
21 and/or misleading marketing, advertisement, packaging and labelling of food products  
22 and dietary supplements.

23           93. As a result of Defendant’s above unlawful, unfair and fraudulent acts and  
24 practices, Plaintiff and members of the Class have suffered a substantial injury by  
25 virtue of buying a product that misrepresented and/or omitted the true contents and  
26 benefits of the Magnesium Supplements’ magnesium contents. Had Plaintiff and  
27 members of the Class known that Defendant’s materials, advertisement and other  
28

1 inducements misrepresented and/or omitted the true contents and benefits of the  
 2 Magnesium Supplements, they would not have purchased said products. Likewise,  
 3 Defendant's misleading and deceptive practices caused Plaintiff to purchase  
 4 Defendant's Magnesium Supplements and/or pay more than they would have  
 5 otherwise had they know the true nature of the contents of the Magnesium  
 6 Supplements.

7  
 8 94. As a result of Defendant's above unlawful, unfair and fraudulent acts and  
 9 practices, Plaintiff, on behalf of himself and all others similarly situated, and as  
 10 appropriate, on behalf of the general public, seeks damages including full restitution  
 11 of all improper revenues and ill-gotten profits derived from Defendant's wrongful  
 12 conduct to the fullest extent permitted by law. Misbranded nutritional supplements  
 13 cannot legally be manufactured, held, advertised, distributed or sold. Thus,  
 14 misbranded nutritional supplements have no economic value and are worthless as a  
 15 matter of law, and purchasers of misbranded nutritional supplements are entitled to a  
 16 restitution refund of the purchase price of the misbranded product.

### 17 **SEVENTH CAUSE OF ACTION**

#### 18 **Breach of Implied Warranty of Merchantability Pursuant to Cal. Com. Code § 2314**

#### 19 **(On Behalf of the California Subclass)**

20 95. Plaintiff incorporates by reference all allegations contained in this  
 21 Complaint as though fully stated herein.

22 96. Defendant is a merchant with respect to the Magnesium Supplements.

23 97. The Magnesium Supplements were subject to implied warranties of  
 24 merchantability running from the Defendant to Plaintiff and Class Members.

25 98. An implied warranty that the Magnesium Supplements were  
 26 merchantable arose by operation of law as part of the sale of the Magnesium  
 27 Supplements.

28 99. Defendant breached the implied warranty of merchantability in that the

1 Magnesium Supplements do not contain the amount of advertised magnesium derived  
 2 from magnesium glycinate, do not provide the benefits associated with the warranted  
 3 and advertised 400 mg of magnesium as magnesium glycinate per serving, and thus  
 4 were not in merchantable condition when Plaintiff and Class Members purchased  
 5 them, or at any time thereafter, and they were unfit for the ordinary purposes for  
 6 which such nutritional supplements are used.

7  
 8 100. Defendant has breached the implied warranty of merchantability because  
 9 the Magnesium Supplements when sold would not pass without objection in the trade.

10 101. As a result of Defendant's breach of the applicable implied warranties,  
 11 purchasers of the Magnesium Supplements suffered an ascertainable loss, were  
 12 harmed, and suffered actual damages.

### 13 **DEMAND FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,  
 15 prays for judgment against Defendant as follows:

- 16 a. An order certifying the proposed Class, designating Plaintiff as named  
 17 representative of the Class, and designating the undersigned as Class  
 18 Counsel;
- 19 b. An order awarding Plaintiff and class members their actual damages,  
 20 incidental and consequential damages, punitive damages, statutory  
 21 damages and/or other form of monetary relief provided by law;
- 22 c. An order awarding Plaintiff and the class restitution, disgorgement, or  
 23 other equitable relief as the Court deems proper;
- 24 d. An order enjoining Defendant from continuing to engage in the  
 25 unlawful and unfair business acts and practices as alleged herein;
- 26 e. Reasonable attorneys' fees and costs;
- 27 f. Pre-judgment and post-judgment interest, as provided by law;
- 28 g. Such other and further relief as this Court deems just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

DATED: April 17, 2024

By: /s/ Trinette G. Kent  
Trinette G. Kent, Esq.  
Lemberg Law, LLC  
*Attorneys for Plaintiff*